

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 480 of 2003 (S/B)

Date of decision: 16th August, 2004

For the approval of:

Hon'ble Chief Justice V.S. Sirpurkar.

Hon'ble Mr. Justice J.C.S. Rawat.

- Whether the order/judgment should be sent to the reporters for reporting?
- Whether the reporters be allowed to see the judgment?

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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 480 of 2003 (M/B)

A.C. Ramola

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Petitioner

Versus

State of Uttaranchal through
Secretary, Medical Health &
Family Welfare, Dehradun and others

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Respondents

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Sri V.K. Bist, learned senior counsel for the petitioner.

Sri K.P. Upadhyaya, learned counsel for the State.

Miss. Menka Tripathi, learned counsel for the respondent no.5.

Coram: Hon. V.S.Sirpurkar, C.J.
 Hon. J.C.S.Rawat, J.

Dated: August 16, 2004

[Per Hon'ble the Chief Justice]

1. This is a writ petition by an unfortunate petitioner. He was serving as a doctor and was member of Hill sub-cadre in the erstwhile State of Uttar Pradesh. He was allocated to the State of Uttaranchal finally because of the order passed by the Central Government. Under that order, all the employees of the State of U.P., who were working under the Hill sub-cadre were finally allocated to the State of Uttaranchal.
2. The petitioner as per the prevailing rule of Uttaranchal, retired at the age of 58 years on 31.05.2002. This was really unfortunate for him because had he continued in U.P. and had he not been finally allocated to the State of Uttaranchal, he would have earned two more years of service because of Notification dated 28.11.2001 passed by the State of U.P. The petitioner very significantly did not challenge his final allocation to the State of Uttaranchal, which he could have challenged probably on this ground. However, he retired. However, finding that a person like him, respondent no.5, who was an erstwhile member of general cadre (not Hill sub-cadre), and who was also provisionally allocated to the State of Uttaranchal, was allowed to continue upto the age of 60 years, this petition is filed for the petitioner's continuing upto the age of 60 years. This petition has been filed on 26th of September, 2003 and even ordinarily, was the petition to be allowed, the petitioner could have been allowed to serve upto 31.05.2004.

Be that as it may, though the petition suffered from latches, the petition was entertained.

3. Before us, learned counsel for the petitioner points out that the respondent no.5 would have ordinarily retired at the age of 58 years on 30.4.2002. He was not a member of the Hill sub cadre, but was a member of general cadre. However, he had given his choice for being allocated to the State of Uttaranchal and accordingly he was sent provisionally to the State of Uttaranchal, more particularly u/s 75 (2) of the U.P. Reorganisation Act. Before three days of retirement, the State of Uttaranchal, relieved the respondent no.5 as he was a person of general cadre and made him over to the State of U.P. He accordingly went to State of U.P. Very ironically, the State of U.P. was not prepared to accept him and he was made over the State of Uttaranchal on 31.7.2002. Very unfortunately and very significantly, however, on 1.6.2002 i.e. barely on the next day the petitioner retired, State of Uttaranchal has increased the age of retirement from 58 to 60 years, though this order was passed on 15.06.2002. Resultantly, the respondent no. 5 was allowed to continue for two more years. The petitioner, therefore, only claims that though respondent no.5 was to have retired at the age of 58 years on 30.04.2002 i.e. before the retirement date of the petitioner, it being 31.05.2002, the respondent no.5 has been given the advantage to continue upto 60 years, while the same benefit and advantage has been denied to the petitioner. He, therefore, thinks that he has been discriminated against. That is, in short the challenge.

4. Against this, learned counsel for the State Government points out that the petitioner was a member of Hill sub-cadre while serving in the State of U.P. He also points out that all the members of Hill sub-cadre were permanently allocated to the State of Uttaranchal by the order of the Central Government dated 11.09.2001. It is further pointed out that the respondent no. 5, who was not a member of Hill sub-cadre but a member of general cadre under the U.P. Reorganisation Act, has been allocated to the State of Uttaranchal only provisionally because of the operation of section 75 (2) of the U.P. Reorganisation Act and would have retained his character as U.P. employee till he was finally allocated to the State of Uttaranchal. That did not happen. Therefore, the respondent no.5 retained his character in U.P.

provisionally till his allocation to the State of Uttaranchal and, therefore, he was retained because the age of retirement of U.P. employees was 60 years and not 58 years vide Notification of the U.P. Government w.e.f. 28.11.2001 This in short is defence.

5. Learned counsel for the petitioner has pointed out that irony of fate on the of the petitioner, but unfortunately it is not for us to interfere in the legislative policy. The fact remains that the petitioner want to be compared with unequal, like respondent no.5, who was not a member of Hill sub-cadre. As we have expressed, the petitioner for his relieving at the age of retirement of 58 years in the State of Uttaranchal as against 60 years in the State of U.P., could have challenged his final allocation order of the Central Government. He did not like to do so probably he was very much interested in continuing in Uttaranchal upto the age of 58 years. It so happened that the petitioner retired on 31.05.2002, while the age of retirement was increased for Uttaranchal employees, who were in service only on 01.06.2002. Such accidents do happen and nothing can be done about them. Since the petitioner was seeking to be compared with unequal, his claim for discrimination, therefore, breach of Article 14 of the constitution of India, cannot be entertained. The petition has no merits. We have already sympathies with the petitioner.

6. The petition is dismissed accordingly.

(J.C.S.Rawat, J.)
16.8.2004

(V.S.Sirpurkar, C.J.)
16.8.2004

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